

REMARKS

Claims 1 to 15 and 20 are in the case.

Applicant is attaching hereto a Declaration by George Lazarovits, one of the inventors in the application, and hereby requests that this be made of record.

The Declaration submitted with this amendment is substantially identical to the information previously presented to the Examiner in response to the Final Office Action. However, it is now in the proper form of a Declaration and shows that reducing soil pH does not have an effect on potato scab disease.

With this amendment, Applicant would address the comments of the Examiner as set forth in the official communication of September 20, 2002. Therein, the Examiner stated that the study presented therewith (the Declaration) was unpersuasive. The Examiner further stated that the effective pH lowering is to convert nitrite to nitrous acid to obtain a sufficient amount of nitrous acid in soil to be lethal to *S. scabies*. In this respect, the Examiner stated that "nitrous acid can be considered to be a fungicide and controlling *S. scabies* as disclosed by the study is using a fungicide in combination with increasing acidity as in the prior art as suggested by Anderson et al."

The reasoning of the Examiner is not understood. The prior art merely states that a combination of a fungicide and increasing the soil acidity could be useful in treating fatal scab disease. Thus, the prior art teaches that one may add a fungicide and an acid reducing agent to control potato scab disease. Applicant is adding an acid reducing agent and a nitrogen containing material. The nitrogen containing material is

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certainly not equivalent to a fungicide and there certainly is no teaching in the prior art of which Applicant is aware that would suggest the same. If it is the position of the Examiner that the nitrogen containing material is a fungicide, then Applicant respectfully requests that the Examiner provide prior art or other reference material to support this position. It must be pointed out that Applicant is not adding the nitrous oxide, but rather is generating the same within the soil.

Applicant has also amended Claim 1 to further define that the nitrogen containing material is present in an amount sufficient to generate nitrous acid.

In view of the above, it is respectfully submitted that this application is in order for allowance.

Respectfully,




Eric Fincham
Reg. No. 28,201

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on Dec 12, 2002

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Barbara Duffus

IN THE CLAIMS:

Claim 1 has been amended as follows:

1. (Amended) A method of controlling soilborne pathogens in a soil comprising the step of adding a nitrogen containing material and a pH reducing agent to said soil, said pH reducing agent being present in an amount sufficient to reduce soil pH below [5.5.] 5.5, said nitrogen containing material being present in an amount sufficient to convert said nitrogen containing material to nitrous acid to thereby control said soilborne pathogens.